

**No.**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**MARCUS SIMPSON- PETITIONER**

**vs.**

**THE HAMILTON COUNTY COURT OF COMMON PLEAS  
HONORABLE JUDGE ETHNA M. COOPER, - RESPONDENT**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF OHIO**

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**PETITION FOR WRIT OF CERTIORARI**

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***Preface:*** An alleged victim commits perjury, initiating a criminal proceeding that causes a innocent person to be convicted by a trial court.

### **QUESTION PRESENTED**

Whether perjury amounts to a judicial usurpation of power, rendering the trial court's judgment void, therefore mandamus (Lie).

## **LIST OF PARTIES**

[X] All parties appear in the caption of the case on the cover page.

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**IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from State of Ohio:

The opinion of the Ohio Supreme Court appears at Appendix 'C' to the petition and has been reported at: *State ex rel Simpson v. Cooper*, Slip Opinion No. 2018-Ohio-4068.

The opinion of the First District Court of Appeals appears at Appendix 'A' to the petition and is ☒ unpublished.

**JURISDICTION**

☒ For cases from State of Ohio

The date on which the Ohio Supreme Court decided the case was October 10<sup>th</sup> 2018. A timely motion for rehearing was thereafter denied by the Ohio Supreme Court on December 12<sup>th</sup> 2018 and a copy of the order denying rehearing appears at Appendix 'D'.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **United States Constitutional Amendment XIV [1868]**

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### **Title 2921 Ohio Revised Code**

Perjury. "No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material...(F) Whoever violates this section is guilty of perjury, a felony of the third degree."

### **Title 2731.02 Ohio Revised Code**

Mandamus. "The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested. Such writ shall contain a copy of the petition, verification, and order allowance."

### **Title 2911.01 Ohio Revised Code**

Aggravated Robbery.

The text is found Appendix [E].

## STATEMENT OF THE CASE

This case arises from Petitioner's thirty-plus years of litigation to have the illegal and unlawful void judgment in case number B-8301629 vacated and set aside.

On April 14<sup>th</sup>, 1983, in the Hamilton County Municipal Court, being first duly cautioned and sworn, Mr. Brunkel instituted the charge of aggravated robbery pursuant to R.C. Sec. 2911.01 against Petitioner with the filing of a complaint, basing this complaint on and specifically alleging an "attempted theft offense", and his (Mr. Brunkel's) "recovery of property". On April 21<sup>st</sup> 1983, in the Hamilton County Municipal Court at Petitioner's preliminary hearing, being first duly cautioned and sworn, Mr. Brunkel was asked if Petitioner had taken anything from him. Mr. Brunkel replied, "No.". On May 19<sup>th</sup> 1983, the Hamilton County Grand Jury returned the indictment charging petitioner with the offense of aggravated robbery in violation of R.C. Sec. 2911.01. The grand jury specifically charged petitioner with "*THEFT OF UNITED STATES CURRENCY FROM JOEY BRUNKEL had ON OR ABOUT HIS PERSON. A DEADLY WEAPON, to-wit: A KNIFE*, in violation of Section 2911.01 of the Ohio Revised Code, and against the peace and dignity of the State of Ohio." (App. E). On or about April 1983 petitioner pled not guilty to the same.

On April 23<sup>rd</sup> 1984, at Petitioner's bench trial, the complaint and preliminary hearing documents were omitted from the records. Mr. Brunkel, being first duly cautioned and sworn, was asked if petitioner had attempted to take his money. Mr. Brunkel told the court "No.". On that same day April 23<sup>rd</sup> 1984, at the end of the State's case, petitioner motioned for a Rule 29 judgment of acquittal. The trial court made the following findings: "I think reasonable inferences are that one could conclude that under all of the circumstances that a theft offense was attempted,

and therefore, I am going to overrule the motion for judgment of acquittal.” On that same day April 23<sup>rd</sup> 1984 at the end of the trial, the court found the case to be “strictly one of credibility” and found “There is no question in my mind that the Brunkels are telling the truth and that what happened on the evening in question are exactly the facts as they occurred. Therefore, I am convinced beyond a reasonable doubt that the defendant is guilty as charged.” On the 25<sup>th</sup> day of May 1984 Petitioner was sentenced to a term of five (5) to twenty-five (25) years in prison under R.C. Sec. 2911.01. Counsel appealed without introducing the omitted documents into the record *Id.*, challenging the conviction on “insufficient evidence and manifest-weight grounds, based on the fact the alleged victim Mr. Brunkel admitted at trial that Petitioner did not attempt to rob him.” The court of appeals affirmed *State v. Simpson*, 1<sup>st</sup> Dist. Hamilton No. C-840420, 1685 WL 6728 (Apr. 3, 1985). The Petitioner’s discretionary appeal was declined. In May 1985, Petitioner filed a post-conviction action introducing the omitted documents *Id.* After decades of non-stop collateral challenges on the grounds as set forth herein, and the courts’ denial of the same on procedural and res judicata grounds [*State ex rel, Simpson v. Cooper, Slip Opinion* No. 2018-Ohio-4068, *State ex rel Simpson v. Cooper*, 120 Ohio St. 3d, 2008-Ohio-6110, *State ex rel Simpson v. Cooper*, 131 Ohio St. 3d 1550, 2012-Ohio-2263, *State of Ohio v. Marcus Simpson*, No. 2012-0501( unreported)], on November 3<sup>rd</sup> 2017 Petitioner filed his action in mandamus in the First District Court of Appeals, Hamilton County, Ohio. His claim: “Mandamus will (lie), where, as here, perjury has caused a judicial usurpation of power, void judgment, and therefore Petitioner’s right to relief.”, stating the same facts as here and in the question presented (O.R.C. 2731 et seq.; *State ex rel Love v. O’Donnell*, 150 Ohio St. 3d 378, 2017-Ohio-5659}.

On November 8<sup>th</sup> 2017 Respondent filed motion to dismiss on res judicata grounds. On November 13<sup>th</sup> 2017 Petitioner filed opposition challenging res judicata. On December 5<sup>th</sup> 2017



the court granted Respondent's motion on res judicata grounds (App. A). On December 11<sup>th</sup> 2017 petitioner filed for reconsideration, arguing the same facts herein with supporting case law (*Kerr vs. U.S. Dist. Court for Northern Dist. of California*, 96 S. Ct. 2119 (1976); *Will vs. United States*, 389 U.S. 90, 95 (1967); *Will vs. Calvert Fire Insurance Co.* 437 U.S. 655, 662, 98 S. Ct. 2552 (1978)\*; The 14<sup>th</sup> Amendment, Title 2921 - Perjury. On January 30<sup>th</sup> 2018 the court found said motion "Not well taken" and overruled the same.( App. B ). Petitioner timely appealed to the Ohio Supreme Court, again challenging res judicata on the grounds as set forth in the question presented and statement of facts herein. Respondent filed brief arguing res judicata as to Petitioner's claim. Petitioner replied, challenging Respondent to produce a decision which adjudicates his perjury claim, also arguing that Respondent had violated rules of the court by not addressing his contentions. Instead, the court had disregarded Petitioner's actual claim and restated it thusly: "Simpson's mandamus claim challenges the credibility of the evidence on which his aggravated robbery conviction is based.". The court used its own restated claim rather than the Petitioner's actual claim to preclude this, and all, challenges by Petitioner over the decades, and affirm on res judicata grounds. Petitioner then filed for reconsideration, calling on the court to "correct a manifest miscarriage of justice." The court denied the same (App C. and D). The act of Perjury has been a clear, indisputable, and indefensible fact.

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\* This court stated; "Mandamus is available where there is a clear and indisputable abuse of discretion or usurpation of judicial power by the trial court. " The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations...only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy. *Will, Kerr and Will supra*.

## REASONS FOR GRANTING THE PETITION

1. Perjury before the State Judicial System is clear and indisputable, but the State's courts disregarded it - resting in the injustice.

Attempting to end decades of bias and abuse of discretion by the State's lower courts, Petitioner filed a motion pursuant to the State's high court rules, to declare Respondent a frivolous litigator. In defense of said motion, the State's high court conceded Petitioner's true claim, stating, "Simpson argues that...the alleged victim Mr. Brunkel did committed [sic] the crime of perjury initiating the felony offense which [Simpson] illegally and unlawfully stands convicted of .(Empahsis deleted.)"

2. To clarify the effect of perjury on the judicial system.

The court noted "Emphasis deleted" regarding Petitioner's attempt to bring attention to the crime that actually was committed in the initial case, to-wit: perjury, thus simultaneously ignoring, denying, and perpetuating perjury's grave effect on the judicial system. The system itself is obstructing justice. Perjury has systemically been, and continues to be willfully ignored and disregarded, allowing the abuse of discretion and power to go unchecked - indeed, *sanctioning* the same seems clearly ingrained in the system itself (App. C., par. 5-9).

3. The question presented is unsettled.

The case history demonstrates an exceptionally rare and extraordinary, decades-long failure to obtain the ends of justice. The facts prove perjury has caused an unjust conviction.

4. To require the Ohio judicial system to right it's wrong and to strive to do better.

5. To ensure the doctrine of *res judicata* never defeats the fundamental principles of Due Process and the Rule of Law.

With that, citizens-now more then ever, will rest assured perjury is neither tolerated nor

allowed to fester by the system.

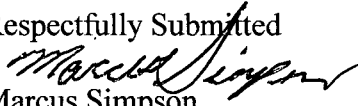
6. To give relief to any innocent person who, as here, stands convicted of a crime the (alleged) victim admitted was actually never committed nor attempted. *Id.*.

7. And most importantly-By sanctioning perjury for decades, the Ohio judicial system has so far departed from the accepted and usual course of judicial proceedings - said departure even having been sanctioned by the lower courts - as to call for an exercise of this Court's supervisory power.

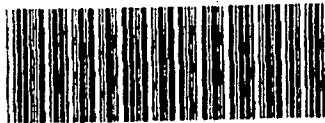
**CONCLUSION**

The petition for a writ of certiorari should be granted

Respectfully Submitted

  
Marcus Simpson,

Date January 10<sup>th</sup> 2019



D120264419

IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO

ENTERED  
DEC 05 2017

STATE OF OHIO EX REL. MARCUS  
SIMPSON,

APPEAL NO. C-170606

Relator,

vs.

ENTRY GRANTING MOTION TO  
DISMISS PETITION FOR WRIT OF  
MANDAMUS/PROCEDENDO

HON. ETHNA COOPER,

Respondent.

This cause came on to be considered upon the motion of the Respondent to dismiss the petition for writ of mandamus/procedendo, and upon the response thereto.

The motion is well taken and is granted. Relator seeks a writ compelling the trial court to vacate his conviction in Case No. B-8301629. This court recently held that the trial court did not have jurisdiction to entertain relator's postconviction claim. *State v. Simpson*, 1st Dist. Hamilton No. C-150740 (June 28, 2017). The mandamus action is barred by res judicata and is therefore dismissed.

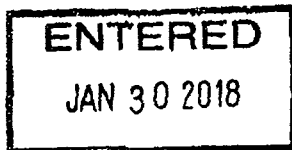
To The Clerk:

Enter upon the Journal of the Court on DEC 05 2017 per order of the Court.

By:

Beth A. May  
Presiding Judge

(Copy sent to counsel)



IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO



STATE OF OHIO EX REL. MARCUS  
SIMPSON,

APPEAL NO. C-170606

Relator,

vs.

ENTRY OVERRULING MOTION  
FOR RECONSIDERATION AND  
MOTION FOR EN BANC  
CONSIDERATION

HON. ETHNA COOPER,

Respondent.

This cause came on to be considered upon the motion of the Relator to reconsider the entry of dismissal issued on December 5, 2017, and to consider the matter en banc.

The motions are not well taken and are hereby overruled.

To The Clerk:

Enter upon the Journal of the Court on JAN 30 2018 per order of the Court.

By: \_\_\_\_\_

Presiding Judge

(Copy sent to counsel)

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Simpson v. Cooper*, Slip Opinion No. 2018-Ohio-4068.]

### NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

### **SLIP OPINION NO. 2018-OHIO-4068**

### **THE STATE EX REL. SIMPSON v. COOPER, JUDGE.**

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Simpson v. Cooper*, Slip Opinion No. 2018-Ohio-4068.]

*Mandamus—Challenge to credibility of the evidence—Res judicata—Court of appeals’ dismissal of petition affirmed.*

(No. 2018-0215—Submitted May 8, 2018—Decided October 10, 2018.)

APPEAL from the Court of Appeals for Hamilton County,  
No. C-1700606.

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### **Per Curiam.**

{¶ 1} Appellant, Marcus Simpson, appeals the judgment of the First District Court of Appeals dismissing his petition for a writ of mandamus against appellee, Hamilton County Common Pleas Court Judge Ethna Cooper. We affirm the judgment of the court of appeals.

## SUPREME COURT OF OHIO

### Background

{¶ 2} In 1984, Simpson was convicted in Hamilton County of one count of aggravated robbery and sentenced to five to 25 years in prison. The court of appeals affirmed. *State v. Simpson*, 1st Dist. Hamilton No. C-840420, 1985 WL 6728 (Apr. 3, 1985). We declined to accept Simpson’s discretionary appeal.

{¶ 3} In November 2017, Simpson filed a petition for a writ of mandamus asking the First District Court of Appeals to compel Judge Cooper to vacate Simpson’s aggravated-robbery conviction. Judge Cooper filed a motion to dismiss. In December 2017, the court of appeals granted the motion to dismiss on res judicata grounds.

### Legal Analysis

{¶ 4} To be entitled to a writ of mandamus, Simpson must establish by clear and convincing evidence that (1) he has a clear legal right to the requested relief, (2) Judge Cooper has a clear legal duty to provide it, and (3) Simpson lacks an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O’Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

{¶ 5} Simpson’s mandamus claim challenges the credibility of the evidence on which his aggravated-robbery conviction is based. However, on direct appeal, Simpson challenged his conviction on insufficient-evidence and manifest-weight grounds. *Simpson*, 1985 WL 6728 at \*1. Therefore, Simpson had—and has used—an adequate remedy in the ordinary course of the law and is not entitled to a writ of mandamus. *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 8 (“An appeal is generally considered an adequate remedy in the ordinary course of law sufficient to preclude a writ”).

{¶ 6} Moreover, in a previous appeal challenging the dismissal of a prior mandamus action, we held that “res judicata bars Simpson’s claims concerning insufficiency of the evidence supporting his conviction.” *State ex rel. Simpson v. Cooper*, 120 Ohio St.3d 297, 2008-Ohio-6110, 898 N.E.2d 936, ¶ 7. And in



Supreme Court case No. 2012-0501, Simpson filed an original action in mandamus in this court asserting similar claims. *State ex rel. Simpson v. Cooper*, 131 Ohio St.3d 1550, 2012-Ohio-2263, 967 N.E.2d 762 (granting Judge Cooper's motion to dismiss).

### **Motions**

{¶ 7} Simpson has also filed a motion asking this court to declare Judge Cooper a frivolous and vexatious litigator, as well as a motion to appoint the Office of the Ohio Public Defender to represent him for purposes of this appeal.

{¶ 8} S.Ct.Prac.R. 4.03(B) states that “[i]f a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Supreme Court may, sua sponte or on motion by a party, find the party to be a vexatious litigator.” S.Ct.Prac.R. 4.03(A) defines an action as frivolous “if it is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.”

{¶ 9} Simpson argues that we should declare Judge Cooper to be a vexatious litigator because she has not vacated his conviction on the grounds that “the alleged victim Mr. Brunkel did committed [sic] the crime of perjury initiating the felony offense which [Simpson] illegally and unlawfully stands convicted of.” (Emphasis deleted.) Simpson's legal history demonstrates that he has instituted numerous civil actions collaterally challenging his conviction on these grounds. And Judge Cooper's role in these civil actions has been limited to either ruling on his various trial-court motions or defending herself when named as a party. Accordingly, we deny Simpson's motion.

{¶ 10} We deny Simpson's motion to appoint counsel as moot.

Judgment affirmed.

O'CONNOR, C.J., and O'DONNELL, KENNEDY, FRENCH, DEWINE, and DEGENARO, JJ., concur.

FISCHER, J., not participating.

# The Supreme Court of Ohio

FILED

DEC 12 2018

CLERK OF COURT  
SUPREME COURT OF OHIO

State of Ohio ex rel. Marcus Simpson

v.

Hon. Ethna Cooper

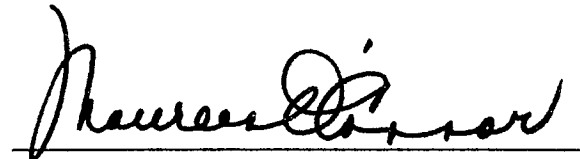
Case No. 2018-0215

RECONSIDERATION ENTRY

Hamilton County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Hamilton County Court of Appeals; No. C-1700606)



Maureen O'Connor  
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

APPENDIX D.

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**2911.01 Aggravated robbery.**

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;

(2) Have a dangerous ordnance on or about the offender's person or under the offender's control;

(3) Inflict, or attempt to inflict, serious physical harm on another.

(B) No person, without privilege to do so, shall knowingly remove or attempt to remove a deadly weapon from the person of a law enforcement officer, or shall knowingly deprive or attempt to deprive a law enforcement officer of a deadly weapon, when both of the following apply:

(1) The law enforcement officer, at the time of the removal, attempted removal, deprivation, or attempted deprivation, is acting within the course and scope of the officer's duties;

(2) The offender knows or has reasonable cause to know that the law enforcement officer is a law enforcement officer.

(C) Whoever violates this section is guilty of aggravated robbery, a felony of the first degree.

(D) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(2) "Law enforcement officer" has the same meaning as in section 2901.01 of the Revised Code and also includes employees of the department of rehabilitation and correction who are authorized to carry weapons within the course and scope of their duties.

Effective Date: 09-16-1997